

Howard County Code
Title 17 – Public Protection Services
Subtitle 4 – Consumer Protection

Sec. 17.400. - Definitions.

- (a) Person means an individual proprietor, partnership, corporation, firm, cooperative, association or any other group of individuals, however organized.
- (b) Consumer means a purchaser, lessee, recipient or prospective purchaser, lessee or recipient of goods, merchandise, services, debts, obligations or credit, including a co-obligor or surety, which are primarily for personal, household, family or agricultural purposes.
- (c) Services means building repair and improvement services, professional services, the repair of automobiles, television sets, and other similar services, and the repair or installation of plumbing, heating, electrical or mechanical devices.
- (d) Merchant means any person who offers or makes available to consumers, either directly or indirectly, merchandise, goods, services or credit.
- (e) Merchandise means any objects, wares, goods, commodities, intangibles or real estate.
- (f) Administrator means the head of the Office of Consumer Affairs.
- (g) Advisory Board on Consumer Affairs, hereinafter known as the "Board," shall consist of seven members. Each appointment shall be for an overlapping five-year term, and each appointee shall hold office until a successor is appointed and confirmed. A vacancy on the Board shall be filled for the unexpired term of the departing member. All members of the Board shall be designated by the County Executive, subject to confirmation by the County Council. The members of the Board shall serve without compensation, but they may be reimbursed for all expenses reasonably incurred in the performance of their duties as may be provided in the budget.

Sec. 17.401. - Office of Consumer Affairs.

- (a) General Provisions. General provisions applicable to this Office are set forth in subtitle 2, "Administrative Departments and Offices," of title 6, "County Executive and the Executive Branch," of the Howard County Code.
- (b) Head. The Consumer Affairs Administrator shall head the Office of Consumer Affairs. The Director of Citizen Services shall exercise administrative supervision over the Office of Consumer Affairs.
- (c) Qualifications of Consumer Affairs Administrator. The Consumer Affairs Administrator shall have thorough knowledge of methods and practices of protecting consumer interest, including knowledge of County, State and Federal laws, and knowledge of the methods and techniques of investigating complaints and charges of unlawful trade practices. The Administrator shall have at least five years of experience in community service or related work, including one year dealing with consumer protection or trade practices and at least one year of managerial experience.
- (d) Duties and Responsibilities. The Office of Consumer Affairs shall have the following duties:
 - (1) To regulate solicitors and peddlers pursuant to subtitle 7, "Solicitors and Peddlers," of title 14, "Inspections, Licenses, and Permits," of the Howard County Code.

- (2) To receive, investigate and conciliate complaints and initiate its own investigation of deceptive or unfair trade practices against consumers; to hold hearings, compel the attendance of witnesses, administer oaths, take the testimony of any person under oath, and, in connection therewith, require the production of any evidence relating to any matter under investigation or in question by the Office.
- (3) To issue summons to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence in any matter to which this subtitle applies. Any such summons shall be served by the Sheriff or Deputy Sheriff of the political subdivision in which is located the residence of the person or the main office of the firm, association, partnership or corporation against whom or which the summons is served. In case of disobedience to a summons, the County, on behalf of the Office, may apply to a court of appropriate jurisdiction for an order requiring the attendance and testimony of witnesses and/or the production of records or a document. After notice to the person summoned as a witness or directed to produce records and documents, and upon a finding that the attendance and testimony of the witness or the production of the records and documents is relevant or necessary for the proceeding of the Office, the court may issue an order requiring the attendance and testimony of the witness and the production of records and documents. Any failure to obey such an order of the court may be punished as contempt of court.
- (4) To issue cease and desist orders with respect to consumer practices declared to be in violation of this subtitle by the Office. If, upon all the evidence, the Administrator of the Office of Consumer Affairs finds that the respondent has engaged in a deceptive or unfair trade practice within the scope of any provision of this subtitle, it shall so state its findings. The Office thereupon shall issue and cause to be served upon the respondent an order requiring the respondent to cease and desist from the deceptive or unfair trade practice and to take such affirmative action as equity and justice may require to effectuate the purposes of this subtitle.
- (5) To refer to appropriate governmental or regulatory agencies, either public or private, having jurisdiction over consumer protection matters, any information concerning an apparent or potential violation of any consumer protection laws.
- (6) To present the interests of consumers before administrative and regulatory agencies and legislative bodies.
- (7) To assist, advise and cooperate with other local, State and Federal agencies and officials to protect and promote the interest of the County consumer public.
- (8) To assist, develop and conduct programs of consumer education and information through public hearings, meetings, publications or other material prepared for distribution to the consumer public of the County.
- (9) To undertake activities to encourage local business and industry to maintain high standards of honesty, fair business practices and public responsibility in the production, promotion and sale of merchandise, goods and services and the extension of credit.
- (10) To exercise and perform such other functions or duties consistent with the purposes or provisions of this subtitle which may be deemed necessary or appropriate to protect and promote the welfare of County consumers.
- (11) To render annual reports as to the number of complaints filed, the nature thereof and the disposition thereof and the other relevant activities of the Office undertaken during the previous year.
- (12) To make administrative rules and regulations as may be necessary to ensure the orderly operation of the Office and to promulgate standards further defining the "unfair or deceptive trade practices" as

set forth in this subdivision. These rules and regulations and standards shall take effect no earlier than 60 days after their adoption by the Office. Any regulation adopted hereunder shall be in accordance with the Administrative Procedure Act [title 2, subtitle 1 of this Code.]

(13) To administer subtitle 5, "New Home Contract of Sale," of title 17, "Public Protection Services," of the Howard County Code, according to the provisions of section 17.505, "Administration, Enforcement and Penalties," of subtitle 5 of title 17 of the Howard County Code.

Sec. 17.402. - Advisory Board on Consumer Affairs.

- (a) General Provisions. General provisions applicable to this Board are set forth in subtitle 3, "Boards and Commissions," of title 6, "County Executive and the Executive Branch," of the Howard County Code.
- (b) Number of Members. There is an Advisory Board on Consumer Affairs which shall consist of seven members.
- (c) Qualifications:
 - (1) All members shall be residents of Howard County.
 - (2) The membership shall reflect a cross-section of the consumer and business interests.
 - (3) At least two members shall represent a consumer interest group.
 - (4) At least two members shall represent a business interest group.
 - (5) From the remaining members, at least one member shall represent an economically disadvantaged group.
- (d) Executive Secretary. The Consumer Affairs Administrator or the Administrator's designee shall serve as Executive Secretary of the Board and shall attend all meetings of the Board.
- (e) Meetings. The Board shall meet on call by the Chairman as frequently as required to perform its duties.
- (f) Duties and Responsibilities. The Advisory Board on Consumer Affairs shall carry out all duties and responsibilities assigned to it by law.
 - (1) The Board may annually review the programs of the Office and make recommendations to the Administrator prior to the submitting of the annual budget.
 - (2) The Board shall submit an annual report to the County Executive and to the County Council.
 - (3) The Board may advise the Office of Consumer Affairs in carrying out its duties.
 - (4) The Board may hold public hearings as deemed necessary, including hearings for the purpose of forming recommendations on inclusion or exclusion of persons or organizations from applications of the provisions of this subtitle.
 - (5) At the directive of the County Executive or by resolution of the County Council, the Advisory Board on Consumer Affairs shall review and make recommendations on any matter related to consumer protection.

Sec. 17.403. - Deceptive or unfair trade practice prohibited.

- (a) It shall be unlawful for any merchant to engage in a deceptive or unfair trade practice with respect to any consumer whether or not any consumer has, in fact, been misled, deceived or damaged thereby. Deceptive or unfair trade practices include, but are not limited to:
- (1) Representations that merchandise, goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have.
 - (2) Representations that the merchant has a sponsorship, approval, status, affiliation or connection that he does not have.
 - (3) Representations that merchandise or goods are original or new, if they are deteriorated, altered, reconditioned, reclaimed or secondhand.
 - (4) Representations that merchandise, goods or services are of particular standard, quality, grade, style or model, if they are of another.
 - (5) A misrepresentation as to a material fact which has a tendency to mislead.
 - (6) The failure to state a material fact, if such failure deceives or tends to deceive.
 - (7) Disparaging the merchandise, goods, services or business of another by false or misleading representations of material facts.
 - (8) Advertising or offering merchandise, goods or services without intent to sell them or sell them as advertised or offered.
 - (9) Advertising or offering merchandise, goods or services with intent not to supply reasonably expected public demand, unless the advertisement or offer discloses a limitation of quantity or other qualifying conditions.
 - (10) Making false or misleading representations of fact concerning: The reasons for, existence of or amounts of price reductions; or the price in comparison to price of competitors or ones own price at a past or future time.
 - (11) Knowingly falsely stating that services, replacements or repairs are needed.
 - (12) Falsely stating the reasons for offering or supplying merchandise, goods or services at sale or discount prices.
 - (13) The harassment of any person, either by telephone, cards or letters, with regard to any act other than legal process.
 - (14) Any deception, fraud, false pretense, false premise, misrepresentation or the knowing concealment, suppression or omission of any material fact with the intent that consumers rely upon such concealment, suppression or omission in connection with the sale or advertisement of any merchandise or goods or with the subsequent performance of services, whether or not any person has, in fact, been misled, deceived or damaged thereby.
 - (15) Any false, falsely disparaging or misleading oral or written statement, visual description or other misrepresentation of any kind which has the capacity, tendency or effect of deceiving or misleading consumers and is made in connection with the sale, lease, rental, loan or bailment of merchandise,

goods or services, the offering for sale, lease, rental, loan or bailment of merchandise, goods or services, the extension of consumer credit or the collection of consumer debts.

- (16) Failure to provide a written estimate of repairs, alterations, modifications or servicing when requested by a consumer and then performing such subsequent repair, alteration, modification or servicing of the item without providing the estimate as requested.
- (17) Making repairs, alterations, modifications or servicing exceeding by ten percent or more the price quoted in a written estimate, without prior written or verbal approval of a consumer.
- (18) Failure to reassemble or restore an electrical or mechanical apparatus, appliance, chattel or other goods or merchandise to its tendered condition, unless a service or labor charge is paid, without notification of the service or labor charge prior to receiving the tendered item.
- (19) Failing to supply to a consumer a copy of a sales or service contract, lease, promissory note, trust agreement or other evidence of indebtedness which that person may execute or has, in fact, executed.
- (20) Selling or leasing or providing merchandise, goods or services on a credit sale basis with knowledge by the merchant, at the time of the transaction, that there was no reasonable probability of payment in full of the obligation by the consumer.
- (21) Selling, leasing or providing merchandise, goods or services with knowledge by a merchant, at the time of the transaction, of the inability of the consumer to receive substantial benefits from the merchandise, goods or services sold or leased.
- (22) Selling, leasing or providing merchandise, goods or services where there exists a gross disparity between the price of the merchandise, goods or services sold or leased and the value of the merchandise, goods or services measured by the price at which similar merchandise, goods or services are readily obtainable in transactions by like buyers or lessees. Any insurance commission or rebate received by a merchant shall be considered in determining the existence of a gross disparity.
- (23) The fact that the merchant failed to disclose that he contracted for or received a commission fee or rebate for insurance with respect to credit sales.
- (24) The fact that the merchant has knowingly taken advantage of the inability of the consumer to reasonably protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement.
- (25) Replacing parts or components in an electrical or mechanical apparatus, appliance, chattel or other goods or merchandise when such parts or components are not defective, unless this replacement is specifically requested by the consumer.
- (26) Falsely stating or representing that repairs, alterations, modifications or servicing have been made when they have not been.
- (27) Insertion by a merchant, in a contract of sale or lease, of a clause or condition which is so one sided as to be unconscionable under the circumstances existing at the time of the making of the contract.

Sec. 17.404. - Exclusion.

This subtitle shall not apply to:

- (1) Professional services of lawyers or medical and dental practitioners engaged in their respective professional endeavors;
- (2) Any television or radio broadcasting station or to any publisher or printer of a newspaper, magazine or other form of printed advertising who broadcasts or prints an advertisement which violates this subtitle, except insofar as such station or publisher or printer engaged in deceptive or unfair practices in the sale or offering for sale of its own merchandise, goods or services or has knowledge of the advertising being in violation of this subtitle;
- (3) Public service companies subject to the jurisdiction of the public service commission, as provided in article 78 of the Annotated Code of Maryland (1969 Replacement Volume).

The Office shall have the authority to receive complaints concerning the aforesaid excluded merchants and to refer these complaints to the appropriate professional agency or group.

Sec. 17.405. - Restraining unlawful acts.

Whenever the Administrator has reason to believe that a merchant is using, has used or is about to use any method, act or practice declared by section 17.403 of this subtitle to be unlawful, and that proceeding would be in the public interest, the Administrator may refer this matter to the Office of Law for an action in the name of the County against such merchant to restrain, by temporary or permanent injunction, the use of such method, act or practice, upon the giving of appropriate notice to that merchant. Any court of competent jurisdiction may issue restraining orders, temporary or permanent injunctions or other appropriate forms of relief.

Sec. 17.406. - Private action.

- (a) Any consumer who purchases or leases merchandise, goods or services primarily for personal, family, household or agricultural purposes, as herein defined, and thereby suffers any ascertainable loss of money or property, real or personal, as the result of the use or employment by any merchant of a method, act or practice declared unlawful by section 17.403 of this subtitle, may bring an action under the rules of civil procedure in the court of appropriate jurisdiction in Howard County or in the appropriate court of the County in which the merchant resides or has his principal place of business, to recover actual damages. This court may, in its discretion, award punitive damages and provide such equitable relief as it deems necessary or proper.
- (b) In any action brought by a consumer under this section, the court may award, in addition to the relief provided in this section, reasonable attorney's fees and costs.

Sec. 17.407. - Filing of complaints by consumer.

Any consumer who has reason to believe that he or she has been subjected to an unlawful trade practice, as set forth in section 17.403, may file a complaint in writing with the Administrator, which shall state the name and address of the person alleged to have committed the violation complained of and the particulars thereof, and such other information as may be required by the Office.

Sec. 17.408. - Procedures and enforcement.

- (a) Administration. Upon the filing of a complaint, as set forth in this subtitle, the Administrator of the Office shall cause such investigation as he or she deems appropriate to ascertain facts and issues. In making such investigations and determinations the Office may use the authority granted to it in section 17.401
- (b) Reasonable Grounds a Violation Has Occurred. Whenever the Administrator determines that there are reasonable grounds to believe a violation has occurred, the Office shall commence with one or more of the following procedures, which it, in its sole discretion, deems appropriate:
 - (1) Conciliation. Attempt to conciliate the matter, either by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them, or by such other methods as this office shall, in its discretion, deem appropriate. In attempting such conciliation to assist a complaining consumer to resolve the individual dispute, the Office may utilize the goods services of the Advisory Board on Consumer Affairs. Conciliation conferences shall be informal, and nothing said or done during such initial conference shall be made public by the Office, the Board, or its members, unless the parties agree thereto in writing. The terms of the conciliation agreed to by the parties may be reduced to writing and incorporated into a written conciliation or settlement agreement to be signed by the parties, which written agreement is for conciliation purposes only and does not constitute an admission by any party that the law has been violated. A written conciliation or settlement agreement shall be signed, on behalf of the Office, by the Administrator of the Office.
 - (2) Assurance of compliance or of discontinuance. Accept a written assurance of compliance or assurance of discontinuance with respect to any matter which involved the violation of section 17.403 of this subtitle from any merchant who has engaged or was about to engage in any unlawful trade practice. Any such assurance shall be a matter of public record and shall be signed by the Administrator. No assurance of compliance or assurance of discontinuance shall constitute admission by any party thereto that there has been a violation of any law or regulation.
 - (3) Refer to Office of Law. Refer any matters to the Office of Law for appropriate action if in the opinion of the Administrator, such action is the most effective procedure to enforce or administer the provisions of this subtitle.
- (c) Failure to Adhere to Assurance of Compliance or Discontinuance. It shall be a violation of this subtitle to violate or fail to adhere to any provision contained in a written assurance of compliance or assurance of discontinuance or conciliation agreement. Any failure by the Office to act with regard to a violation of any provision of a written assurance or agreement shall not constitute a waiver of any right of the Office or provision of such assurance or agreement.
- (d) Cooperation of Licensing Authorities and Other Government Agencies. The Office is authorized to seek the cooperation of the licensing authorities and contact any Department of the Government of the County in connection with any investigation under this subtitle by the Office of any person licensed to do business within the County or having a contractual relationship with the Government of the County.
- (e) Dismissal for Lack of Reasonable Grounds. If the Administrator determines that the complaint lacks reasonable grounds upon which to base a violation of this subtitle, the Administrator may dismiss such complaint or order such further investigation as may be necessary.
- (f) Referral to Office of Law. If the Office of Consumer Affairs, with respect to any matter which involves a violation of section 17.403, fails to effect an assurance of compliance or discontinuance or determines that a complaint is not susceptible of settlement, the Office may transmit the matter to the Office of Law for appropriate legal action.

- (g) Other Venues and Remedies. Nothing herein shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled or from filing any complaint with any other agencies or court of law or equity.
- (h) Financial Stipulations and Conditions. Any written assurance of discontinuance, conciliation or settlement agreement or any cease and desist order provided for by this subtitle may include stipulations or conditions for the payment, by the violator, of the cost of the investigation by the Office or its staff and may also include stipulations or conditions for the restitution, by the violator, to the consumer of money, property or other things received from such consumer in connection with a violation of this subtitle. The aforesaid stipulations and conditions shall not preclude the Office from utilizing any other stipulation, condition or remedy, including the payment of stipulated penalties, it deems necessary to correct a violation of this subtitle.
- (i) Arbitration of Disputes:
 - (1) Submission to arbitration. Notwithstanding any other provisions of this title, the Office may enter into an agreement with a person in the County or State to submit a dispute arising under this title to arbitration in accordance with the Maryland Uniform Arbitration Act.
 - (2) Arbitration programs. The Office may administer a program of voluntary arbitration of consumer disputes, including:
 - i. The recruitment and training of volunteer arbitrators;
 - ii. The education of the public and business community as to the benefits of arbitration.
 - (3) Clerical support. The Office shall provide office space and clerical help for arbitration tribunals.

Sec. 17.409. - Restitution or compensatory damages.

In any action brought pursuant to this subtitle, the County shall be authorized to seek appropriate restitution or compensatory damages for any consumer who has been harmed by any violation of this subtitle.

Sec. 17.410. - Office investigation.

In the event the Administrator has reason to suspect that a merchant has engaged in an unlawful trade practice, as defined in this subtitle, the Administrator is hereby authorized to initiate an investigation of such suspected unlawful trade practice and to file, in writing, a statement of charges, which shall detail the alleged violation or violations, a copy of which shall be served on the merchant forthwith. A statement of charges may be filed at the commencement of an investigation or at such subsequent time as the Administrator, in the Administrator's sole discretion, deems appropriate. In no event shall legal action be instituted until at least 15 days following a statement of charges, during which time the respondent person shall be afforded an opportunity to appear before the Administrator for the purpose of negotiating a written assurance of discontinuance, as provided in this subtitle.

Sec. 17.411. - Costs.

In any action brought under the provisions of this subtitle, the Office shall be entitled to recover from a violator the Office's costs for investigation and hearing.

Sec. 17.412. - Penalties.

- (a) Civil Penalties. The Office of Consumer Affairs may enforce the provisions of this subtitle with civil penalties pursuant to the provisions of title 24, "Civil Penalties," of the Howard County Code. A first violation of this subtitle shall be a Class D offense. Subsequent violations shall be Class A offenses.
- (b) Penalty Recoverable in Civil Action. Alternatively or in addition to and concurrent with other remedies, any merchant who commits a violation of any of the provisions of this subtitle relating to unlawful trade practices shall be liable for the payment to the County of a penalty, recoverable in a civil action of up to \$500.00 for each violation.
- (c) Injunctive and Other Relief. In addition, any merchant shall be subject to injunctive or other appropriate action or proceeding to correct any violation of this subtitle. Any court of competent jurisdiction may issue restraining orders, temporary or permanent injunctions or other appropriate forms of relief.

Sec. 17.413. - Severability.

The provisions of this subtitle are severable and, if any provision, sentence, clause, section or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this subtitle or their application to other persons and circumstances. It is hereby declared to be the legislative intent that this subtitle would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if persons or circumstances to which the subtitle or any part thereof is inapplicable had been specifically exempted therefrom.